

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 296 of 1997

with

FIRST APPEAL NO. 299 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

DEVJIBHAI SAVABHAI

Appearance:

Mr. Umesh A.Trivedi, A.G.P. for appellants

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 02/11/98

ORAL JUDGEMENT

(Per : Panchal, J.)

In these appeals, which are instituted under section 54 of the Land Acquisition Act, 1894, State of Gujarat has questioned legality and propriety of the judgment and award dated August 31, 1996 rendered by the learned Assistant Judge, Rajkot, in Land Reference Case No.26/87 and Land Reference Case No. 29/87 respectively.

2. The Executive Engineer, Rajkot Irrigation Project made proposal to the Deputy Collector, Land Acquisition and Rehabilitation (Irrigation), Rajkot to acquire the agricultural lands situated in villages of Taluka Paddhari including village Rangpur for the purpose of Nyari-II Irrigation Project. On receipt of proposal and other materials, the State Government issued notification under section 4(1) of the Land Acquisition Act, 1894 on March 15, 1984. Thereafter notification under section 6 was published on April 11, 1985. After issuance of notification under section 9 of the Act, necessary notices were issued to the interested persons and an award was made under section 11 of the Act on November 10, 1986 by the Land Acquisition Officer. Under the award, Land Acquisition Officer awarded compensation at the rate of Rs. 175/- per Are for Bagayat land and Rs. 115/- per Are for Jirayat land. He also fixed compensation of super-structures etc. as per the table annexed to the award. Feeling aggrieved by the said award, the respondents and others whose lands were acquired filed applications seeking reference to the Court for enhancement of compensation. Accordingly, references were made and they were numbered as Land Reference Cases No.21/87 to 29/87. Before Court the claimants claimed compensation at the rate of Rs. 500/per Are for the lands acquired. They also claimed that the Land Acquisition Officer had undervalued super-structure, trees etc. The claimants produced documentary as well as oral evidence in support of their claims advanced before Court. On appreciation of evidence led by the parties, Reference Court held that the respondents in both these appeals were entitled to receive compensation at the rate of Rs. 336/- per Are for their lands which were acquired. The Court further held that the respondents in both the appeals were also entitled to receive a sum of Rs. 10000/- as compensation for the wells acquired with their lands, by judgment and award dated August 31, 1996, giving rise to present appeals.

3. Learned Counsel for the appellants in both the

appeals contended that having regard to the nature of evidence led by the claimants, the Court was not justified in awarding compensation at the rate of Rs. 336/- per Are for the lands acquired and, therefore, the award deserves to be set aside. It was claimed that while assessing compensation of the lands, learned Judge was not justified in separately assessing costs of the wells and, therefore, that part of the award by which compensation of Rs. 10,000/- is ordered to be paid to the respondents in each appeal, deserves to be set aside. In support of the last submission, learned Counsel placed reliance on the decision rendered in the case of O.JANARDHAN REDDY AND OTHERS vs. SPL. DY. COLLECTOR, L.A. UNIT-IV, LMD, KARIMNAGAR, A.P. AND OTHERS, (1994)6 SCC 456.

4. Though the respondents are duly served, they have neither appeared in person nor through any advocate.

5. So far as the contention that the Reference Court was not justified in awarding compensation at the rate of Rs. 336/- per Are for the lands acquired, is concerned, we find that there is no substance in it and it deserves rejection. As noted earlier, on applications being filed by different claimants, different references were made to the District Court which were registered as Land Reference Cases No.21/87 to 29/87. All the Land Reference Cases were disposed of by the learned Judge vide common judgment and award dated August 31, 1996. The State of Gujarat had challenged the judgment and award rendered in Land Reference Cases No. 21/87 to 29/87, except Land Reference Cases No.26/87 and 29/87 by filing First Appeals No.291/97 to 295/97, 297/97 and 298/97. In all those appeals, on behalf of the State Government it was pleaded that fixation of compensation for the lands acquired was excessive. However, Division Bench comprising Y.B.Bhatt & R.P.Dholakia, JJ. has rejected the said contention vide judgment and order dated June 18, 1998. A bare reading of the judgment rendered by the Reference Court makes it evident that reliance is placed on sale deed dated October 22, 1981 which was produced at Exh.18 on the record. The sale deed was executed approximately 2 1/2 years prior to the date of Section 4 notification. The sale deed represents sale of the lands situated in the same village. The land sold was in the proximity of the lands acquired and it indicated that sale price of the lands at that time was Rs. 395/- per Are. The Reference Court also placed substantial reliance upon Exh. 50, which is another award of the Reference Court under section 18 of the Act pertaining to acquisition of lands acquired for the very

same purpose and located in the same village. That award also makes it abundantly clear that the claimants in the said case were awarded compensation at the rate of Rs. 395/- per Acre for the lands belonging to them. Having regard to the evidence led by the claimants, it cannot be said that determination of compensation at the rate of Rs. 336/per Acre for the lands belonging to the respondents, is in any manner excessive so as to warrant interference in the present appeal.

6. So far as compensation of Rs.10,000/- for the wells acquired with the lands in each case is concerned, the Supreme Court in the case of O.JANARDHAN REDDY AND OTHERS (Supra) has held that when the agricultural lands are acquired under the Act, the owners of such lands or persons who have interest in them become entitled to payment of compensation awardable for such lands under the Act and the main component of such compensation would be the market value of the acquired agricultural land but the advantage which an agricultural land may have because of the irrigation facility it had from the irrigation well, could only enhance the value of agricultural land depending upon the water yield from the well, as a result of which, the irrigation well in an acquired agricultural land, cannot have a value apart from the value of the agricultural land itself and the estimated construction costs of irrigation wells of agricultural lands cannot form the basis for awarding compensation for such irrigation wells independently of the compensation awardable for the agricultural lands for the benefit of which such wells exist. In view of the clear pronouncement of the Supreme Court on the point in question, we are of the opinion that the Reference Court was not justified in directing the State Government to pay Rs. 10,000/- as compensation for the wells acquired along with lands acquired in each appeal and, therefore, that part of the award will have to be set aside.

For the foregoing reasons, both the appeals partly succeed. Award of Rs. 10,000/- passed in each appeal as compensation for the wells acquired along with the lands of the respondents is hereby set aside and quashed. Rest of the award is upheld. The appeals are accordingly, allowed with no order as to costs.

(patel)